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Supreme Court of the United States

October Term, 1997

ELOISE ANDERSON, Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; PETE WILSON, Governor of the State of California; and CRAIG L. BROWN, Director, California Department of Finance,

Petitioners,

v.

BRENDA ROE and ANNA DOE, on behalf of themselves and all others similarly situated,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Petitioners, Eloise Anderson, Director, California Department of Social Services; California Department of Social Services; The Honorable Pete Wilson, Governor of the State of California; and Craig L. Brown, Director, California Department of Finance (hereafter, "California") reply to the Opposition to the Petition for Writ of Certiorari as follows:

Contrary to plaintiffs' arguments, this Court has yet to address the questions presented by the Petition. The question of the appropriate standard of review to be utilized in determining the constitutionality of a statute, such as California Welfare and Institutions Code section 11450.03 ("section 11450.03"), which merely sets the level of public welfare assistance, and does not (and is not intended to) penalize the right to travel, has yet to be determined by this Court. In the absence of such a determination, lower courts persist in subjecting such statutes to an inappropriate strict scrutiny analysis. The continuing importance of this question is shown by the recent Congressional authorization for such durational residency requirements as part of federal welfare reform, and by the number of states which have implemented such programs.

I

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED AS THIS COURT HAS YET TO ADDRESS THE ISSUES PRESENTED BY THIS CASE

Plaintiffs fail to recognize the vital importance of the distinctions between section 11450.03 and other residency requirements previously invalidated by this Court. The critical distinction between section 11450.03 and other invalidated durational residency requirements is that section 11450.03 does not penalize the right to travel. As previously briefed in California's Petition for Writ of Certiorari ("Petition"), section 11450.03 has been narrowly tailored to adjust welfare benefit levels without penalizing the right to travel.

Section 11450.03 explicitly provides that persons subject to the statute receive *at all times* a constitutionally permissible amount of welfare benefits: either what they received, or would have received, in their prior state of residence, or (after one year of residency) the full amount of the California grant. Because newcomers to California are entitled to benefits under section 11450.03, it is an act of legal fiction to maintain either that the statute is intended to prevent indigent people from moving to California, or that section 11450.03 hampers or prevents newcomers in any way from traveling to California, solely as a result of the temporary grant amount mandated by the statute. Section 11450.03 is thus *factually different* from other statutes previously invalidated by this Court because California's statute *does not* render newcomers ineligible for aid, as was the case in *Shapiro v. Thompson*,

394 U.S. 618 (1969).[1] Further, California's statute does not create *permanent* distinctions based on the length of state residency as was the case in *Zobel v. Williams*, 457 U.S. 55 (1982) (size of payments from oil revenues dependent upon years of residence in Alaska), and in *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) and *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) (preferences for veterans based on length of state residency).

Furthermore, it is an act of legal fiction to maintain that persons subject to section 11450.03 are deprived of the basic necessities of life. Section 11450.03 does not deny eligibility for welfare benefits; to the contrary, it provides for the continuation of the constitutionally permissible amount of welfare benefits newcomers received in their prior state of residence. Section 11450.03 has no impact on the receipt of Medicaid benefits and, in fact, increases the amount of Food Stamps issued to persons subject to section 11450.03. (Appendix to Petition at 38.)

Because this Court has not previously ruled on the standard of review for a statute which does not penalize the right to travel and which establishes a system for the distribution of public benefits based upon, for a limited

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[1] Plaintiffs attempt to distinguish the Connecticut and Pennsylvania statutes at issue in *Shapiro* from the California statute at issue here, by referring to this Court's reference to the "partial assistance" offered by Connecticut and Pennsylvania. *Shapiro*, at 635. Plaintiffs point out a distinction without a difference. Unlike the California statute, the Connecticut and Pennsylvania statutes *denied eligibility* to newcomers, while offering limited, emergency assistance only. *Shapiro*, 623 n.2, 627 n.5.

period of time, length of residency, this Court should grant the petition for writ of certiorari. The importance of this issue of constitutional law was established when this Court previously granted certiorari on this issue. *Anderson v. Green*, 513 U.S. 922 (1994).[2]

The importance of this issue has only increased during the intervening years. At least eleven other States have adopted durational residency requirements similar to section 11450.03. The United States Congress has authorized such requirements as part of federal welfare reform. As to the question of the correct standard of review now presented to this Court, a Pennsylvania trial court has recently applied a rational basis standard of review to Pennsylvania's durational residency requirement. *Maldonado v. Houstoun*, 177 F.R.D. 311 (E.D. Pa. Oct. 6, 1997) (order granting preliminary injunction) *appeal docketed*, No. 97-1893 (3rd Cir. Nov. 20, 1997). This issue has not gone away, it is not settled, and the states and the lower courts need guidance now.

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[2] To the extent that *Shapiro v. Thompson*, 394 U.S. 618, 619 (1969), and its progeny appear to hold that the constitutionality of a statute relating to the administration of public welfare assistance which does not penalize the right to travel, or any other fundamental right, should be subjected to a strict scrutiny analysis, those holdings should be re-examined.

II

PLAINTIFFS MAY NOT RELY UPON MATERIALS REGARDING PROPOSITION 165 OR UPON MATERIALS NOT PRESENTED TO THE DISTRICT COURT TO SUPPORT THEIR ARGUMENTS REGARDING THE CONSTITUTIONALITY OF THE STATUTE

In order to buttress their claim that section 11450.03 is intended to actually prevent indigent people from moving to California (a purpose that does not appear in the wording of section 11450.03, nor in the legislative history of section 11450.03), plaintiffs rely on extraneous materials. Plaintiffs argue that the purpose of the Statute is analogous to other proposed legislative schemes evidenced by materials plaintiffs submitted in support of their motion for preliminary injunction. These materials deal with California Proposition 165, a voter initiative that did not become law, and California Senate Bill 366, which also was not enacted into law. These materials are irrelevant to this Court's consideration of the statute, as neither Proposition 165 nor Senate Bill 366 is a precursor of section 11450.03.

The precursor of section 11450.03 is Senate Bill 485. (Petition, at 3.) Accordingly, it is inappropriate for plaintiffs to rely on their Exhibits 5 (Supplemental Excerpts of Record filed by plaintiffs with the appellate court, "SER" SER49), 6 (SER51), 7 (SER64), 8 (SER67), and 9 (SER85) because those materials are not part of the legislative history of Senate Bill 485. Additionally, to the extent these materials relate to California Proposition 165, it is inappropriate to rely on these materials as that proposition was rejected by the California electorate.

Also, plaintiffs' exhibits are not competent evidence. While affidavits in support of a preliminary injunction need not fit all of the requirements of affidavits in support of a motion for summary judgment, 11 C. Wright and A. Miller, *Federal Practice and Procedure, Civil*, § 2949, at 471 (1973), the materials in the referenced exhibits are not affidavits, verified pleadings, or transcribed deposition materials. The exhibits clearly are not competent evidence.

In *Flynt Distributing Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) the court noted that the urgency of obtaining a preliminary injunction necessitates a prompt determination and makes it difficult to obtain affidavits from persons who would be competent to testify at trial. The court held that the trial court may give even inadmissible evidence some weight when to do so serves the purpose of preventing irreparable harm before trial. However, the court in *Flynt* was dealing with a prohibitory injunction, i.e., one which merely maintained the status quo, and not with a mandatory injunction such as that sought by plaintiffs in this case. Therefore, this Court should not consider the referenced exhibits because they are not properly authenticated, they are hearsay to the extent they purport to be testamentary in nature, and they clearly are not relevant.

Proposition 165, Assembly Bill 671, the Governor's Budget as analyzed by the Legislative Analyst, and Senate Bill 366 did not become, and are not now, the law of the State of California. They are not relevant legislative history for the statute at issue here which did become law in California.

The California Supreme Court was presented with a similar situation in the case of *Delaney v. Superior Court*, 50 Cal.3d 785 (1990). There, the court was called upon tc determine the electorate's intent in passing a constitutional amendment by initiative which shielded a reporter from contempt proceedings in refusing to answer questions about unpublished information. Delaney, who was seeking the information, argued that the court should look to the legislative history of California Evidence Code section 1070 to determine the intent of the voters in passing the Constitutional amendment. The court responded:

> The history, however, is of no help in that regard. Article I, section 2(b) is plain on its face, and we need not – indeed, should not – search for external indicia of the voters' intent. Moreover, the *legislative* history of section 1070 could, as a matter of logic, reflect only the *Legislature's* intent. That history would not provide us with any guidance as to *the voters'* subsequent intent because none of the indicia of the Legislature's possible intent (committee analysis and digest and letters from the statute's author) were before the voters.

Id. at 801 (citation omitted) (footnote omitted).

Plaintiffs' analysis is even more absurd. They rely on materials regarding a failed amendment to the California Constitution and other legislative materials which did not result in final legislation, to establish the intent of the California Legislature in passing section 11450.03. This Court should not be so detained. The absurdity here is even more pronounced since the ballot materials and the

legislative analysis of *unpassed* bills do not reflect any legislative intent.

Finally, section 11450.03 does not require resort to any materials for an understanding of its provisions. It means exactly what it says. None of plaintiffs' materials reflect applicable legislative history.

CONCLUSION

This Court should grant the petition for writ of certiorari. It presents an important question of federal law which has been pending since at least the last time this Court granted a writ of certiorari on this issue. Furthermore, since that time, the United States Congress has authorized states to implement durational residency requirements as part of federal welfare reform. This recent congressional authorization renders it even more imperative than before for the states and the lower courts to be clear as to the correct standard of constitutional review.

By again granting certiorari on this matter, this Court can provide essential guidance on a recurring and important issue.

Respectfully submitted,

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